

GOVERNMENT OF PUDUCHERRY

LABOUR DEPARTMENT

(G. O. Rt. No. 14/AIL/Lab./J/2010, dated 29th January 2010)

NOTIFICATION

Whereas, the Award in I.D. No. 46/2005, dated 24-12-2009 of the Labour Court, Puducherry in respect of the industrial dispute between the management of Aditi Diamonds Private Limited, Puducherry and Miss K. Gnanambigai over non-employment has been received;

Now, therefore, in exercise of the powers conferred by sub-section (1) of section 17 of the Industrial Disputes Act, 1947 (Central Act XIV of 1947), read with the notification issued in Labour Department's G. O. Ms. No. 20/91/Lab./L., dated 23-5-1991, it is hereby directed by Secretary to Government (Labour) that the said Award shall be published in the official gazette, Puducherry.

(By order)

G. MALAR KANNAN,

Joint Secretary to Government (Labour).

BEFORE THE LABOUR COURT AT PONDICHERRY

Present : Thiru E.M.K.S. SIDDHARTHAR, M.A. B.L.,
II Additional District Judge,
Presiding Officer, Labour Court.

Thursday, the 24th day of December 2009

I.D. No. 46/2005

K. Gnanambigai Petitioner

Verses

The Managing Director,
Aditi Diamonds Private Limited,
Pondicherry Respondent

This industrial dispute coming on 21-12-2009 for final hearing before me in the presence of Thiru R. Mugundhan, Advocate for the petitioner, Thiru T. Ramalingam, Advocate for the respondent upon hearing both sides, upon perusing the case records, after having stood over for consideration till this day, this court passed the following:

AWARD

This industrial dispute arises out of the reference made by the Labour Department, Government of Pondicherry *vide* G. O. Rt. No. 200/2005/Lab./AIL/J, dated 14-10-2005 for adjudication of the following industrial dispute that arose between the management of Aditi Diamonds Private Limited, Pondicherry and its workman Miss Gnanambigai over her non-employment;

(a) Whether the non-employment of Miss K. Gnanambigai by the management of M/s. Aditi Diamonds Private Limited, Pondicherry, is justified?

(b) To what relief, she is entitled to?

(c) To compute the relief, if any, awarded in terms of money, if it can be so computed?

2. The petitioner in her claim statement has averred as follows:

The petitioner joined the service of the respondent company in the year 1993 as a Polisher and was subsequently promoted as Checker in the year 1995 and as Supervisor in the year 1996. She had a unblemished service record and was given a Certificate of Appreciation in the year 2000.

While the petitioner was lastly working in Bottom Section as Supervisor, one Senior Supervisor by name Rajendra approached her on 11-6-2003 and expressed his desire to marry her. As the said Rajendra was already married and he did not obtain a divorce decree from the court, she informed him that she was not willing to marry him. After this, the said Rajendra started to giving a lot of troubles to the petitioner. Hence, the petitioner availed leave from 16-7-2004 to 20-7-2004. The said Rajendra started promoting rumours among the workers that the petitioner was in affair with him and because of that the petitioner suffered mental agony. On 12-8-2004 the petitioner was called to the office room where the Senior Supervisors Basker, Rajendran and the Legal Advisor of the company by name Ilanchezhiyan were present. The Legal Advisor asked about the problem and the petitioner explained the facts. Then the Legal Advisor asked the petitioner to sign two papers and when the petitioner questioned, the Legal Advisor requested her to keep faith in him and sign

the papers. Accordingly, the petitioner signed the papers. After that the petitioner requested the Legal Advisor to transfer her to some other department to avoid harassment from the said Rajendra on 13-8-2004 the Legal Advisor called the petitioner and informed her that she could not be transferred and she can quit the job. Once again the Legal Advisor called the petitioner on 19-8-2004 and said that the petitioner has been terminated and further said that if the petitioner voluntarily resigned her job, she would be given Rs. 1,10,000. The Legal Advisor further advised the petitioner to go to the house of Rajendra and solve the problem. Accordingly, the petitioner went to the house of Rajendra, where one Anil and Rajendra were present. The petitioner requested him to bring an amicable solution to the problem. Rajendra told that the petitioner would have to resign her job after marriage. The petitioner cautioned him not to create any further problem and returned back. Because of these problems, the petitioner was on E.S.I. leave and when she returned back to duty on 28-8-2004, she was not allowed to work and was called to the office and it was intimated that the management has sent a letter. The suspension letter, dated 28-8-2004 was given to the petitioner on 30-8-2004, the petitioner replied on 31-8-2004. After that the management sent a show cause notice, dated 9-9-2004 in which it was falsely stated that a domestic enquiry was conducted. The petitioner replied to the abovesaid notice on 12-9-2004. The management issued the dismissal letter on 15-9-2004. Therefore, the petitioner has prayed to reinstate her in service with full back wages.

3. In the counter statement filed by the respondent it is contended that the petitioner was working as Junior Supervisor in the Bottom Section and during working hours, she indulged in an act involving moral turpitude. Only on a complaint against the petitioner by the Senior Supervisor Rajendra Gaokar, the respondent management had to initiate necessary action in the matter. As the petitioner is a woman, it was proposed to conduct an enquiry in secret but in the presence of the other two women employees of the factory. Since the petitioner requested not to disclose the proceedings to other women employees, an enquiry was conducted wherein she admitted the fact that she approached one Senior Supervisor to marry her. Since this is a

sensible issue, the petitioner was advised not to indulge in such activities. Subsequently, based on the complaint received in this connection, a proper disciplinary action was contemplated.

The respondent is an industry employing more than 135 workers out of whom 60% are women. Therefore, it has its own legal obligations to maintain the modesty of a woman employee. The petitioner's act *per se* will set a bad precedent to the women employees. As the petitioner turned to the sexually violent against a male employee of the company both in the work premises and outside, the proceedings against the petitioner was contemplated due to her involvement in the act of moral turpitude which cannot be permitted in an industry of this kind and the respondent is well within the parameters of the law in order to save the moral atmosphere of the industry and its women employee. Hence, he prays for dismissal of the petition.

4. *The point for determination is :*

Whether the petitioner can be considered for reinstatement in service with accrued benefits?

5. *On the point :*

The main contention of the petitioner is that she was working in the respondent company as Polisher in the year 1993, as Checker in the year 1995 and as Supervisor in the year 1996. One Rajendra Gaokar who was also working in the respondent company as Senior Supervisor approached her to marry him. Since he was already married, she was not willing to marry him. Hence, the said Rajendra Gaokar gave trouble to her and finally she has been terminated from the service on false allegation that she insisted the said Rajendra Gaokar to marry her during the office hours and outside. On the side of the claim petitioner Ex.A1 and Ex.A6 were marked by consent. Ex.A1 is the copy of the Suspension Order, dated 23-8-2004 issued to the petitioner. Ex.A2 is the show cause notice, dated 9-9-2004 issued by the respondent to the petitioner. Ex.A3 is copy of the letter, dated 12-9-2004 sent by the petitioner to the respondent company. Ex.A4 is the copy of the termination order, dated 15-9-2004 to the petitioner by the respondent. Ex.A5 is the copy of the letter sent by the petitioner to the Conciliation Officer, dated 3-11-2004. Ex.A6 is the copy of the letter, dated 20-7-2005 sent by the Conciliation Officer to the Secretary to Government (Labour).

6. On the other hand, the contention of the respondent is that since the petitioner gave torture to one Rajendra Gaokar to marry her, based on the complaint from him, the respondent company had taken action against her by terminating her to maintain the modesty of the women employees in order to support his contention, the complaint given by the said Rajendra Gaokar to the respondent company was marked as Ex.R4. In Ex.R4 the said Rajendra Gaokar has stated that the petitioner enquired about his personal life and she told him that if he did not take any positive decision, she will do something seriously and hence he requested the respondent company to take action against her. When the respondent company has taken action against the petitioner based on the complaint Ex.R4 given by the said Rajendra Gaokar, it is the duty of the respondent to examine the said person before this court to prove his case. But the respondent has failed to examine the said witness.

7. It is the further case of the respondent that after receipt of the complaint from Rajendra Gaokar, a secret domestic enquiry was conducted, in which the petitioner has admitted about her misconduct. *Per contra*, the petitioner has denied about the domestic enquiry and stated that one Ilanchezhian, who was the Legal Advisor of the respondent company, obtained her signature in two papers without reading the contents to her. On the side of the respondent, the said enquiry proceedings was marked as Ex.R5. On the one hand if the version of the petitioner that the respondent company had cheated her in obtaining her signature in two papers cannot be believed, on the other hand it has to be believed that a woman cannot tell lie in the above matter, since the petitioner has admitted her relationship with the said Rajendra Gaokar to some extent *i.e.*, discussing and exchanging their personal life. Hence, the contention of the respondent that the petitioner insisted the said Rajendra to marry her cannot be accepted. Even if it is true, it is not a fault on the part of the petitioner to ask him to marry her. Further in order to escape from severe action by the respondent company against her the petitioner would have signed in two papers without knowing the contents of it, as requested by the Legal Advisor of the respondent company. But there is every possibility for the said Rajendra Gaokar to insist the petitioner to marry him and since she refused to do so, as a Senior Supervisor, he would have given trouble to her in the work place and complained

against her to the respondent company, which would result in terminating her from the service. This court is forced to come to this conclusion, as no witnesses either on the side of the petitioner or on the side of the respondent has been examined to prove their respective contentions.

8. Further contention of the petitioner is that there was no domestic enquiry conducted and the principles of natural justice has not been followed in terminating her. On the side of the respondent, it has been argued that the secret domestic enquiry was conducted, since the petitioner requested not to disclose the proceedings to any other woman employee working in the company. The said enquiry report was marked as Ex.R5. On perusal of Ex. R5, it is seen that the statement of the said Rajendra Gaokar was recorded, in which one Baskar has signed as a witness. The petitioner has also signed in the said report. Though the petitioner has admitted her signature found in Ex.R5, she has submitted that one Ilanchezhian, who was the Legal Advisor of the respondent company, has obtained her signature in two papers without reading the contents of it. When the petitioner has denied about conducting the secret domestic enquiry, it is the duty of the respondent to prove the same by way of examining the said witness by name V. Baskar. The non-examination of both Rajendra Gaokar and Baskar is fatal to the case of the respondent.

9. It is further seen from the records that the domestic enquiry has not been conducted by the respondent company as prescribed by law in a impartial manner. The respondent company has conducted the domestic enquiry in a biased manner without giving any opportunity which is entitled for the delinquent as per law as well as by the principles of natural justice. Moreover the respondent company has not heard the contentions of the petitioner and the enquiry report has also been submitted with unjustified findings. The management had taken action by way of issuing show cause notice and by way of conducting domestic enquiry without following the principles of natural justice and retrenched the petitioner. Upon the biased enquiry report alone the management also acted to retrench their employee which is against the principles of natural justice. No opportunity has been given to explain about the antecedents of the petitioner either before the inquiry officer or before the management prior to retrenching the petitioner from the service. There is no allegation against the petitioner that prior

to the alleged incident, there was complaint about the misconduct. Further it is not mentioned in the enquiry report as to who conducted the enquiry and no enquiry officer was appointed to conduct the enquiry. Hence, the respondent company has not followed the principles of natural justice in conducting the domestic enquiry and hence the alleged enquiry report is not binding on the petitioner and the respondent company had utilised the ignorance of the petitioner for fabricating the documents as if a domestic enquiry was conducted. When there is no valid ground stated by the respondent to justify the removal of the petitioner from service, this court finds that the removal of the petitioner from service of the respondent company is unjustified. This point is answered accordingly.

10. In the result, the industrial dispute is allowed and the award is passed to the effect that the non-employment of the petitioner and her dismissal from service is unjustified and is illegal and therefore it is hereby set aside. The respondent company/management shall reinstate her in the post of Supervisor in which the petitioner worked at the time of her removal from service with full back wages and other monetary benefits.

Typed to my dictation, corrected and pronounced by me in the open court, on this the 24th day of December, 2009.

E.M.K.S. SIDDHARTHAR,
II Additional District Judge,
Presiding Officer,
Labour Court, Pondicherry.

List of witnesses examined for the petitioner : Nil

List of witnesses examined for the respondent : Nil

List of exhibits marked for the petitioner :

Ex.A1.— Copy of the suspension order, dated 23-8-2004 issued to the petitioner.

Ex.A2.— Show cause notice, dated 9-9-2004 issued by the respondent to the petitioner.

Ex.A3.— Copy of the letter, dated 12-9-2004 sent by the petitioner to the respondent company.

Ex.A4.— Copy of the termination order, dated 15-9-2004 to the petitioner by the respondent.

Ex.A5.— Copy of the letter sent by the petitioner to the Conciliation Officer, dated 3-11-2004.

Ex.A6.— Copy of the letter, dated 20-7-2005 sent by the Conciliation Officer to the Secretary to Government (Labour).

List of exhibits marked for the respondent :

Ex.R1.— Bio-data of the petitioner, dated 10-10-1993.

Ex.R2.— Letter, dated 5-12-1995 of the petitioner to the respondent company.

Ex.R3.— Letter, dated 26-7-2004 of the petitioner to the respondent company.

Ex.R4.— Complaint, dated 11-8-2004 given by Rajendra Gaokar.

Ex.R5.— Enquiry proceedings, dated 12-8-2004.

Ex.R6.— Letter, dated 20-8-2004 given by Rajendra Gaokar.

Ex.R7.— Suspension order, dated 28-8-2004 issued by respondent company.

Ex.R8.— Show cause notice, dated 9-9-2004.

Ex.R9.— Letter, dated 12-9-2004 sent by the petitioner to the respondent company.

Ex.R10.—Termination order dated 15-9-2004.

E.M.K.S. SIDDHARTHAR,
II-Additional District Judge,
Presiding Officer,
Labour Court, Pondicherry.

GOVERNMENT OF PUDUCHERRY
OFFICE OF THE CHIEF EDUCATIONAL OFFICER
No. 650/CEO/S1/(Exam.)/2009-10.

Puducherry, the 21st January 2010.

NOTIFICATION

It is hereby notified that the original S.S.L.C. Mark Certificate, bearing Serial Number 2455901, under Register Number 483801 of March 2005 in respect of M. Manju, an ex-pupil of Sinnatha Government Girls' Higher Secondary School, Muthialpet, Puducherry, is reported to have been lost and beyond scope of recovery and it is proposed to issue a duplicate certificate. If the original certificate is to be found by anybody, it should be sent to the Director of Government Examinations, Chennai-6, for cancellation, as it is no longer valid.

C. KRISHNARAJ,
Chief Educational Officer.